IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 2177 OF 2006

Rajesh M.Jain and anr. ... Petitioners

Vs.

Municipal Corporation of
Greater Mumbai and Ors. ... Respondents

ALONG WITH

WRIT PETITION (L) NO. 2178 OF 2006

Naseem Ahmed M. Siddique and Ors. .. Petitioners

Vs.

Municipal Corporation of Gr.
Mumbai and Ors. .. Respondents

ALONG WITH

WRIT PETITION (L) NO. 2179 OF 2006

Yusuf Khan Mehboob Khan
and Ors. .. Petitioners

Vs.

Municipal Corporation of
Gr. Mumbai and Ors. .. Respondents

Mr. M.M. Vashi i/by M.P. Vashi & Associates for Petitioners.

Mr. A.Y. Sakhare, Sr. Counsel with Mrs. A.K. Sawla with Ms. Trupti Puranik for Respondents.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED: OCTOBER 12, 2006

P.C.:

. Rule. Heard forthwith.

. The issue in all these petitions is the same or

similar. The Respondent Corporation had invited tenders for collection, transportation of municipality solid waste including common house gully material and material received from the slums. The petitioners herein are three of the tenderers. Their main contention as urged before us is that by the work order dated 28.8.2006 the Corporation could not have imposed the condition directing them to give new vehicles with Bharat III (Euro III) compliance. The contention as urged on behalf of the Petitioners herein is that in terms of the tender document, the vehicles manufactured after January, 2003 had to comply with Bharat Stage II compliance and the new vehicles to be produced should be Bharat Stage III compliance approved by R.T.O. authorities. Relying on this condition, it is pointed out that the Petitioners had based their bids and as such the condition imposed on the Petitioners while accepting their tender of requiring Bharat III compliance is contrary to the tender documents. Our attention is also invited to the communication received from Respondent Corporation dated 9.3.2006 notably Clause 10 and 11 which reads as under :

> "10. It is presumed that you will be providing all new vehicles.

11. The new vehicles that will be provided will be of Bharat State III norms."

. In answer to that, the Petitioner had sent their reply dated 16.3.2006. Dealing with Condition No. 10, it was set out that the vehicles with necessary modifications as per specification of contract condition will be engaged which copy of R.C. book is submitted in Packet "A" at the time of submitting Bid and the remaining new vehicles will be arranged accordingly. It was then set out specifically in answer to query No. 11 that the new vehicles will be provided with Bharat III compliance. In other words Petitioners reiterated their stand.

. Reply has been filed on behalf of Respondent by Mr. Ramkrishna R. Markandeya working as Chief Engineer. It is pointed out that the prebid meeting had been held on 20.12.2005 under the chairmanship of A.M.C. (City) where the salient features of the tender and expectation of work, type and standard of vehicles and equipments were explained in detail to the prospective bidders. The representatives of vehicles manufacturers and equipments manufacturers were also present in the said meeting. It is pointed out that as per requirement of the tender document, before packet B was opened, all the

bidders had to submit the presentation. This presentation was required in terms of Clause (10)(2)(h) which forms part of the tender document. Our attention has been invited to Clause 10(2)(I) which sets out that the tenderer shall submit the presentation of total plan and work methodology i.e. business plan, technical details of vehicles and equipments to be supplied, Bar Chart of activities, parking facilities, vehicle utilization, communication system, office, manpower and maintenance, management, supervision of the activities etc. In the Evaluation evaluation Condition 23.5 it is further provided that the presentation shall be through power point or overhead projector. The copies of slides used in presentation have to be submitted. They would be considered during evaluation. In case of written answers, asked for during presentation, those will also be a part of the evaluation. Tender Condition No. 5(2)(d) sets out that the details of the offered Compactor units/Mini Compactor units/ 1 Ton Closed Vehicle shall be demonstrated in the presentation to be made before opening of Packet B. It is pointed out that when the Petitioners made presentation of their bid, the presentation set out that they would provide Tata Chasis 1615 Ex, Euro III and similarly Tata Chasis 912 Exh., Euro III. In other words, on behalf of the Respondents, it is

contended that considering that the tender document itself contemplates that the presentation will form part of the tender document and that will be considered for evaluation. it was open to the Respondent even though in the tender document, they had asked for vehicles after 2003 which required Bharat II compliance, to take into consideration presentation made by the petitioners themselves. In the said affidavit it is further pointed out that the rates quoted by the Petitioners were comparable to MCGM estimated rates taking into account the new vehicles and equipments and in these circumstances, the Petitioners offers were recommended for acceptances to the standing committee respectively for Zone I, III and V.

. Considering the above, the only issue before us is whether the contention of the Petitioners that the respondents could not have imposed the condition for providing new vehicles of Bharat III compliance was outside the terms of the tender documents. We have reproduced clauses of the tender documents earlier. It is true that the requirement in the tender was Bharat II compliance. At the same time, the tender documents also contemplate for presentation. The presentation by the tenderer was part of the evaluation process. Once that be the part of the evaluation process, it was open to the

respondents to consider the same for the purpose of granting work order. It is not as if the Petitioner are taken by surprise, as they were fully aware of the tender conditions.

. The learned counsel points out to us that their bid is far less compared to the other bidders and that the difference would be in crores of rupees. The issue before the Corporation is to save some moneys and or the requirement of the environment. It is open to the respondents to consider the environmental needs of the city. In our opinion,therefore, it can not be said that the condition imposed by the Respondents in the work order calling on the Petitioners to produce chasis of Bharat III compliance is without authority of law. In these circumstances, in our opinion, there is no merit in these petitions.

. Rule discharged. No order as to costs.

. It is the case of the Petitioner that considering the pendency of these petitions before this court, there is some delay on their part in complying with the tender conditions effective from 1.6.2007. In the event the Petitioners are not in a position to comply with mobilization before 1.6.2007, the respondent to consider sympathetically their case

for extension of one month time in order to complete the period of mobilization.

(ANOOP V. MOHTA,J.) **(F.I.REBELLO, J.)**